

CHIESA SHAHINIAN & GIAN TOMASI PC  
One Boland Drive  
West Orange, New Jersey 07052  
Telephone: (973) 325-1500  
Facsimile: (973) 325-1501  
Scott A. Zuber, Esq.  
Michael R. Caruso, Esq.

*Attorneys for Westchester Fire Insurance Company*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC., et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-23007 (RDD)

(Jointly Administered)

**RESERVATION OF RIGHTS OF WESTCHESTER FIRE INSURANCE COMPANY  
TO MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105, 363, 365 AND 503 AND  
FED. R. BANKR. P. 2002, 6004 AND 6006 FOR APPROVAL OF: (I) (A) GLOBAL  
BIDDING PROCEDURES, (B) BID PROTECTIONS, (C) FORM AND MANNER OF  
NOTICE OF SALE TRANSACTIONS AND SALE HEARING, AND (D) ASSUMPTION  
AND ASSIGNMENT PROCEDURES; AND (II) (A) PURCHASE AGREEMENTS (B)  
SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES, AND (C) ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND LEASES**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Westchester Fire Insurance Company and its affiliates (“**WFIC**” or the “**Surety**”), by and  
through its undersigned attorneys, files this reservation of rights (“**Reservation of Rights**”) to  
the motion of Debtors pursuant to 11 U.S.C. §§ 105, 363, 365 and 503 and Fed. R. Bankr. P.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corp. (7132); APW Supermarkets, Inc. (9509); Borman’s Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599).

2002, 6004 and 6006 for approval of: (i) (a) global bidding procedures, (b) bid protections, (c) form and manner of notice of sale transactions and sale hearing, and (d) assumption and assignment procedures; and (ii) (a) purchase agreements (b) sale of certain of the debtors' assets free and clear of liens, claims, interests and encumbrances, and (c) assumption and assignment of certain executory contracts and leases [Dkt. 26] (the "**Motion**"). While WFIC does not necessarily object to the relief sought in the Motion, WFIC reserves its rights as follows:

### **RELEVANT BACKGROUND**

1. On July 19, 2015 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' cases.

2. Pre-petition WFIC issued various surety bonds at the request and on behalf of Debtors, as principals, and for the benefit of various governmental agencies, as obligees, in the aggregate penal sum of \$20,689,000 (collectively, the "**Bonds**").<sup>2</sup> WFIC holds pre-petition irrevocable letter of credit (the "**Pre-Petition ILOC**") collateral to secure the Debtors' indemnity obligations to WFIC.

3. Attached as exhibits to the Motion are three stalking horse asset purchase agreements (collectively, the "**APAs**" or "**Stalking Horse Agreements**"), each of which provide for certain "Replacement Bonding Requirements." [See Dkt. 26, Exhibits "C", "D" and "E", sections 5.8, 5.10 and 5.8 of the Debtors' APAs with Acme Markets, Inc., Stop and Shop

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<sup>2</sup> The Bonds include, among others, certain single location and multiple locations durable medical equipment bonds required by the Medicare Program, workers compensation bonds, a supersedeas bond, a lottery sales agent bond, an alcoholic beverage bond.

Supermarket Company, LLC and Key Food Stores Co-Operative, Inc. (each a “**Buyer**” or “**Stalking Horse Bidder**”), respectively].

4. The APAs require the Buyers to obtain replacement bonding. WFIC is a not a party to the APAs. Accordingly, the APAs and the Motion impose no obligations on WFIC to: (i) keep its Bonds in place with the Debtors; (ii) extend post-petition surety credit to Debtors; or (iii) bond new principals, such as the Buyers, other Successful Bidders<sup>3</sup> for the Debtors’ assets or any successors to the Debtors.

### **RESERVATION OF RIGHTS**

5. The Surety reserves its rights, in its absolute and sole discretion, to: (i) renew or non-renew any of the Bonds under the terms thereof; (ii) seek an allowance of administrative expense claims for any and all losses under the Bonds, indemnity agreements and/or related documents; (iii) cancel or terminate any of the Bonds under applicable non-bankruptcy law or seek relief from the automatic stay to do so; (iv) object to the terms of any yet to be provided revised Stalking Horse Agreement and/or sale of assets to the Stalking Horse Bidder or other Successful Bidder; (v) bond any Buyer or Successful Bidder for the Debtors’ assets after completion of underwriting and execution of indemnity agreements; (vi) amend, modify or supplement this Reservation of Rights including in response to the filing of any additional documents or exhibits by the Debtors and/or any party-in-interest; and (vii) raise additional arguments at or prior to the hearing on the Motion.

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the same meanings as in the Motion.

**WHEREFORE**, the Surety hereby reserves all rights as set forth above with respect to the Motion, requests all notices under the Motion, and requests that it be granted all such other and further relief as the Court deems just and proper.

Dated: August 3, 2015

Respectfully submitted,

**CHIESA SHAHINIAN & GIAN TOMASI PC**  
*Attorneys for Westchester Fire Insurance Company*

By: /s/ Scott A. Zuber  
SCOTT A. ZUBER

One Boland Drive  
West Orange, New Jersey 07052  
Tel: (973) 530-2046  
Fax: (973) 530-2246  
E-Mail: [szuber@csglaw.com](mailto:szuber@csglaw.com)